

# ***IMPORTANT INFORMATION FOR APPLICANTS APPEALING TO THE BOARD OF ADJUSTMENT***

## **WHAT TO INCLUDE WITH YOUR APPLICATION:**

*Every appeal filed to the Zoning Board of Adjustment is unique with many factors for the Board to consider. You are strongly encouraged to submit complete and thorough information and supporting documentation to assist the Board members in making their determination on your appeal. Such supporting documentation should accompany your application and may include, but is not limited to: photos of the property, surrounding area, abutting parcels and roads; detailed sketches; engineered or surveyed plot plans; copies of deed restrictions; previous surveyed plats of your parcel; a descriptive project narrative; any permits related to the project; and any studies that may have been done with regards to the proposed project and its impact. Timely submittal of materials is imperative. Information that is not presented by the application deadline (available in the Planning Department\*\*) could result in the Board members not having sufficient opportunity to give it due consideration and could delay the Board's decision or result in the denial of the request. \*\*Typically, the application submission deadline for new applications is 24 days prior to the meeting date.*

For any appeal, the application form must be properly filled out. The application form is intended to be self-explanatory, but be sure that you show:

**WHO** owns the property? If the applicant is not the owner, this must be explained.

**WHERE** is the property located? Detailed information on the abutting parcels and surrounding area is more helpful than simply supplying an address.

**DESCRIBE** the property and surrounding area. Give lot area, road and/or water frontage, side and rear property lines, slopes and natural and cultural features (such as cemeteries, rock walls, water courses, etc.), and any other details that will help the Board to understand the unique characteristics of the subject parcel.

**WHAT** do you propose to do? Attach sketches; plot plans, pictures, construction plans, or whatever may help explain the proposed use.

**WHY** does your proposed use require an appeal to the Board of Adjustment?

**WHY** should the appeal be granted?

Your application must include ***an abutter list*** -- a listing showing the names, mailing addresses, map numbers and lot numbers of every abutter within 200 feet (***500 feet if applying for a special exception under Section 320:B(2)c, "Expansion of building beyond existing boundaries"***).

The list should also include names, mailing address and map and lot numbers (when applicable) for every holder of conservation, preservation, or agricultural preservation restrictions, any person or company who has provided certified information with the application or any person(s) acting as agent on behalf of the applicant. Information should be verified at the Alton Land Use and Property Records Department. **THE ACCURACY OF THE LIST IS YOUR RESPONSIBILITY.**

In addition to the abutter list, **envelopes** with each of the listed addresses printed or typed on them must be supplied to the Planning Department with your application. The Planning Department will place the return address on the envelopes and certified delivery postage.

***If you are appealing an administrative decision, a copy of the decision appealed from must be attached to your application.***

**An original and NINE (9) copies of all application materials\*\* must be submitted on the day of submission. \*\*If large plan sets are included with the application materials, only FOUR (4) large plan copies are required and NINE (9) reduced (11"x17") sets.**

A completed ***Fee Schedule*** and ***check*** made payable to the Town of Alton must be included with your application on the day of submission.

|                           |   |
|---------------------------|---|
| <b>Fees:</b> Application: | \$60.00   |
| Notification:             | \$ 5.00 per Agent, Abutter and Holder of Conservation, preservation, or agricultural preservation restrictions. |
|                           | \$10.00 per Owner/Applicant (2 Notifications each)  |
|                           | \$60.00 newspaper notification  |

Mail or deliver the completed application, with all attachments and fees to the Alton Town Hall, Land Use and Property Records Department.

### **ONCE YOUR COMPLETED APPLICATION HAS BEEN SUBMITTED:**

A properly completed application, submitted by the deadline to the Planning Office, will be scheduled at the next public hearing (within 30 days of the receipt of your application). Unless otherwise noticed, Zoning Board of Adjustment hearings are scheduled on the first Thursday of each month (Printed schedules are available in the Planning Department). Public notice of the hearing will be posted and printed in the newspaper, and notice will be mailed to you and to all abutters and other parties whom the Board may deem to have an interest, at least five days before the date of the hearing. The applicant and all other parties will be invited to appear in person or by agent, or counsel to state reasons why the appeal should or should not be granted.

At the hearing, applications scheduled for that evening will be read into the record and then the Board will determine if the application can be accepted as complete and ready for formal Board consideration. Once the application is accepted for consideration, the applicant or his or her agent will be asked to present the application to the Board. The Board may direct questions to the applicant or request additional information. Once the application has been presented, the Chair of the Board will open the discussion up to the public and invite any persons present who may have input to speak. Any written testimony submitted from interested persons will be read into the record at this time. Once all public testimony has been presented, the public input portion of the hearing will be closed. If the Board has sufficient information to make an informed decision, then deliberations will begin and the Board will reach a decision. The

applicant will be informed of the decision verbally at the hearing and then in a written ***Notice of Decision*** sent via certified mail within 144 hours (6 days) of the hearing.

### **AFTER THE HEARING:**

If you believe the Board's decision is wrong, you have the right to appeal. The Selectmen, or any party affected, have similar rights to appeal the decision in your case. To appeal, you must first ask the Board for a rehearing. The ***Motion for Rehearing*** may be in the form of a letter to the Board. The motion **must be made within 30 days after the decision is filed and first becomes available for public inspection in the Board's office**, and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable.

The Board may grant such a rehearing if, in its opinion, good reason is stated in the motion. The Board will not reopen a case based on the same set of facts unless it is convinced that an injustice would be created by not doing so. Whether or not a rehearing is held, **you must have requested one before you can appeal to the courts**. When a rehearing is held, the same procedure is followed as for the first hearing, including public notice and notice to abutters.

See RSA Chapter 677 for more details on rehearing and appeal procedures.

### **IMPORTANT: READ CAREFULLY BEFORE FILLING OUT APPLICATION**

The Board strongly recommends that before making any appeal you become familiar with the Zoning Ordinance and also with the New Hampshire Statutes Title LXIV, RSA Chapters 672 - 677, covering planning and zoning. It is the applicant's responsibility to be properly prepared and to become familiar with any and all applicable laws and regulations pertaining to the proposed project. Failure to do so may result in significant delays and additional costs to the applicant.

Four types of appeals can be made to the Board of Adjustment.

**VARIANCE:** A **variance** is an authorization, which may be granted under special circumstances, to use your property in a way that is not permitted under the strict terms of the zoning ordinance. For a variance to be legally granted, **you must show** that your proposed use meets **all six** of the following conditions:

1. Denial of the variance would result in unnecessary hardship to the owner. **Hardship**, as the term applies to zoning, results if a restriction, when applied to a particular property, becomes arbitrary, confiscatory, or unduly oppressive **because of conditions of the property that distinguish it from other properties** under similar zoning restrictions. Hardship, under zoning law, has nothing to do with the physical or economic condition of the owner. The NH Supreme Court has established a new test for unnecessary hardship consisting of 3 elements:

- a. that the zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment;

- b. that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and
- c. that the variance would not injure the public or private rights of others.

2. The specific request is the minimum variance that will grant reasonable relief to the owner and is necessary for such reasonable use.

3. The request is in harmony with the spirit of this ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed.

4. The request is not contrary to the public interest.

5. Substantial justice will be done.

6. The request will not diminish the value of surrounding properties.

**APPEAL FROM AN ADMINISTRATIVE DECISION:** If you have been denied a building permit or are affected by some other decision regarding the administration of the Alton Zoning Ordinance, and you believe that **the decision was made in error** under the provisions of the ordinance, you may appeal the decision to the Board of Adjustment.

**SPECIAL EXCEPTION:** Certain sections of the Zoning Ordinance provide that a particular use of property in a particular zone will be permitted **by special exception** if specified conditions are met. The necessary conditions for each special exception are given in the ordinance and are set forth below.

## **SECTION 520                      SPECIAL EXCEPTIONS**

(Amended 13 March 1991, 11 March 1999)

A Special Exception is a use that would not be appropriate generally or without restriction throughout a particular zone but which, if controlled as to the number, area, duration, location or relation to the neighborhood would promote the public health, safety, and general welfare. Such uses may be permitted in a particular zone by exception, only if a specific provision for such exception is made in this zoning ordinance and then only by permission of the Board of Adjustment.

- A. The Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, grant special exceptions where allowed in this ordinance.
- B. A plat must be submitted with each application for a special exception in accordance with the criteria as set forth below

Copies of a plat must be submitted with said application to the standards detailed by the Town of Alton Subdivision Regulations, Section 7, and/or Site Plan Review Regulations, Section 7:A&B, or otherwise amended. The Town Planner shall review said plat to ensure all applicable standards have been met, and then forward said plat to the Zoning Board of Adjustment for hearing. The applicant shall retain the right to petition the Zoning Board of Adjustment to grant waivers to any plat standards as defined. Should Planning Board review of said plan be necessary upon granting of special exception, waived plat details (if any) accepted by the Zoning Board of Adjustment,

may not be accepted by the Planning Board.

C. The Board, in review of the application, must find that all the following conditions are met:

1. That a plat has been submitted in accordance with the appropriate criteria in Section 520B. (as amended 11 March 1998, 11 March 1999)
2. The specific site is an appropriate location for the use. No factual evidence is found that property value in the district will be reduced due to incompatible land uses.
3. Factual evidence is not found that the property values in the district will be reduced due to incompatible uses.
4. There is no valid objection from abutters based on demonstrable fact.
5. There is no undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking.
6. Adequate and appropriate facilities and utilities will be provided to insure the proper operation of the proposed use or structure.
7. There is adequate area for safe and sanitary sewage disposal and water supply, and
8. The proposed use or structure is consistent with the spirit of this ordinance and the intent of the Master Plan.

D. In addition to the above general criteria, the specific criteria found elsewhere in this ordinance must be met for:

- MANUFACTURED HOUSING (SECTION 350)
- RECREATION CAMPING PARKS (SECTION 355)
- HEIGHT RESTRICTIONS (SECTION 328)
- CONDOMINIUM CONVERSION (SECTION 329)

**EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS:** The board may grant an equitable waiver only for existing dimensional nonconformities provided the applicant can meet the required standards.

- a) The nonconformity was not discovered until after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser;
- b) The nonconformity was not an outcome of ignorance of the law or bad faith but was instead caused by a legitimate mistake;

If these conditions are satisfied, the board can move on to the additional findings to grant the waiver:

- c) The nonconformity does not constitute a public or private nuisance nor diminish the value or interfere with future uses of other property in the area; and
- d) The cost of correction would far outweigh any public benefit to be gained.

In lieu of the requirements in paragraphs (a) and (b), the violation has existed for 10 years or more with no enforcement action, including written notice, commenced by the town.

Do Not Write in this Space.

Date Filed: \_\_\_\_\_

Case No.: \_\_\_\_\_

**APPLICATION FOR APPEAL  
ZONING BOARD OF ADJUSTMENT  
TOWN OF ALTON**

Name(s) of Applicant: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: (\_\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

Owner(s) of Property concerned: \_\_\_\_\_  
(If same as above, write same)

Address: \_\_\_\_\_  
(If same as above, write same)

Telephone Number: (\_\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

Street Location of Property: \_\_\_\_\_

Tax Map No. \_\_\_\_\_ / Lot No. \_\_\_\_\_ Zone: \_\_\_\_\_

Description of Property \_\_\_\_\_  
(Give length of frontage, side and rear lines)

Size of Property \_\_\_\_\_

Proposed use, or existing use affected \_\_\_\_\_

Note: Fill in Section 1, 2, 3 or 4 as appropriate. This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate

sheet if the space provided is inadequate.

Section 1. **APPEAL FROM AN ADMINISTRATIVE DECISION**

Relating to the interpretation and enforcement of the provisions of the Zoning Ordinance.

Decision of the enforcement officer to be reviewed: \_\_\_\_\_  
\_\_\_\_\_

Date of Decision: \_\_\_\_\_

Article: \_\_\_\_\_ Section: \_\_\_\_\_  
of the Alton Zoning Ordinance in question.

Reason for appeal: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Section 2. **APPLICATION FOR A SPECIAL EXCEPTION**

Description of proposed use showing justification for a Special Exception as specified in the  
Zoning Ordinance Article \_\_\_\_\_ Section \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Section 3. **APPLICATION FOR A VARIANCE**

A variance is requested from Article \_\_\_\_\_ Section \_\_\_\_\_  
of the Zoning Ordinance to permit \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facts to support this request:

1. Denial of the variance would result in unnecessary hardship to the owner because:  
a. the zoning restriction as applied to the property interferes with the reasonable  
use of the property, considering the unique setting of the property in its  
environment such that: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. that no fair and substantial relationship exists between the general purposes of  
the zoning ordinance and the specific restriction of the property because: \_\_\_\_\_  
\_\_\_\_\_

c. the variance would not injure the public or private rights of others since:

2. The specific request is the minimum variance that will grant reasonable relief to the owner and is necessary for such reasonable use because: \_\_\_\_\_

3. The request is in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed because: \_\_\_\_\_

4. The request is not contrary to the public interest because: \_\_\_\_\_

5. Substantial justice will be done because: \_\_\_\_\_

6. The request will not diminish the value of surrounding properties because: \_\_\_\_\_

Section 4. **APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS**

An Equitable Waiver of Dimensional Requirements is requested from Article \_\_\_\_\_  
Section \_\_\_\_\_ of the Zoning Ordinance to permit \_\_\_\_\_

1. Does the request involve a dimensional requirement, not a use restriction?  
( ) Yes ( ) No

2. Provide an answer for *either "a." or "b."* of the following:

a. Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the town

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b. Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser

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and how the violation was not an outcome of ignorance of the law or bad faith, but resulted from a legitimate mistake

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3. Explain how the nonconformity does not constitute a nuisance, nor diminish the value or interfere with future uses of other property in the area \_\_\_\_\_

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4. Explain how the cost of correction far outweighs any public benefit to be gained

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**The Applicant hereby certifies to the Zoning Board of Adjustment that he/she/they has investigated the condition of the property that is the subject of this application and the property outlines and dimensions and their location relative to all existing structures are true and accurate. The Applicant certifies to the Board that all information provided to it in this application is true and accurate, and the Applicant certifies that any decision of the Board will be based on the information that is provided to the Board by the Applicant. The Applicant recognizes that he/she or they will bear the burden of any inaccuracies in the information provided.**

\_\_\_\_\_  
Signature of Applicant/Agent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Applicant/Agent

\_\_\_\_\_  
Date

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Signature of Property Owner

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Date

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Signature of Property Owner

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Date

**Provide or Attach Plot Plan of Site, as Per Sample. Sign and Date Below.**

The applicant certifies that the drawing, dimensions and other data shown on this sketch are accurate. The applicant assumes all responsibility for any inaccuracies in the data provided. This responsibility may include removal of any structure or additions approved by the ZBA.

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Signature

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Date